

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s:	Parcel #s
45-002-02-1-5-00157	002020301750042 (Lot 92)
45-002-02-1-5-00158	002020301750041 (Lot 91)
45-002-02-1-5-00159	002020301750045 (Lot 95)
45-002-02-1-5-00160	002020301750044 (Lot 94)
45-002-02-1-5-00161	002020301750043 (Lot 93)

Petitioners: Jerry W. & Norma J. Kluge
Respondent: Department of Local Government Finance
Assessment Year: 2002

The Indiana Board of Tax Review (the "Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held on November 3, 2003 in Lake County, Indiana. The Department of Local Government Finance (DLGF) made a determination and notified the Petitioners on March 19, 2004.
2. The Petitioners filed Form 139L petitions on April 12, 2004.
3. The Board issued a notice of hearing to the parties dated July 20, 2004.
4. A hearing was held on August 27, 2004, in Crown Point, Indiana before Special Master Alyson Kunack.

Facts

5. The subject properties consist of five (5) residential lots located at 773 S. Appr. Lakeview, Lowell, Cedar Creek Township in Lake County.
6. Three of subject properties (Lots 91, 94, & 95) are unimproved residential lots. One of the subject properties (Lot 92) has a garage on it and another of the subject properties (Lot 93) has a slab on it.
7. The Special Master did not conduct an on-site visit of the property.

- a) The Assessed Value of the subject properties as determined by the DLGF:
- | | |
|---|----------------------|
| Parcel # 002020301750042 (Lot 92) - Land \$20,600 | Improvements \$6,900 |
| Parcel # 002020301750041 (Lot 91) - Land \$15,600 | |
| Parcel # 002020301750045 (Lot 95) - Land \$15,300 | |
| Parcel # 002020301750044 (Lot 94) - Land \$15,100 | |
| Parcel # 002020301750043 (Lot 93) - Land \$20,100 | Improvements \$300 |

- b) The Assessed Value requested by the Petitioners:
- | | |
|--|----------------------|
| Parcel # 002020301750042 (Lot 92) - Land \$8,928 | Improvements \$4,000 |
| Parcel # 002020301750041 (Lot 91) - Land \$9,830 | |
| Parcel # 002020301750045 (Lot 95) - Land \$5,692 | |
| Parcel # 002020301750044 (Lot 94) - Land \$7,395 | |
| Parcel # 002020301750043 (Lot 93) - Land \$8,296 | Improvements \$300 |

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

9. Persons sworn in at hearing:

For Petitioners: Jerry and Norma Kluge, Petitioners

For Respondent: Larry Vales, CLT

Issue

12. Summary of Petitioners' contentions in support of an alleged error in the assessment:

- a) The assessed values assigned to the subject parcels of land are not in accordance with their market value.
- b) The Petitioners computed a multiplier per square foot for land based on sales of comparable properties. The Petitioners used \$1.67 for "buildable" lots (Lots 91-94) and \$1.24 for the "non-buildable" lot (Lot 95). *N. Kluge testimony. Petitioner Exhibit 2, 3 & 4.*
- c) The lots have been listed for sale since December 2003. *N. Kluge testimony. Petitioner Exhibit 5.*
- d) The garage on Lot 92 (parcel # 002020301750042) is in very poor condition. The floor has a large crack that cannot be repaired. *N. Kluge testimony. Petitioner Exhibit 2.*
- e) The slab on Lot 93 (parcel # 002020301750043) should have no value since it cannot be built on. *N. Kluge testimony. Petitioner Exhibit 2.*

13. Summary of Respondent's contentions:

- a) After looking at the Petitioners' evidence and listening to the Petitioners' testimony the Respondent recommended making adjustments to the lots.
- b) The Respondent recommended applying an influence factor of negative 70% for Lots 91, 92, 93 and 94.
- c) The Respondent recommended applying an influence factor of negative 90% for Lot 95 due to the creek.
- d) The Respondent recommended changing the condition of the garage on Lot 92 to "very poor."

Record

- 14. The official record for this matter is made up of the following:
 - a) The Petition, and all subsequent submissions by either party.
 - b) The tape recording of the hearing labeled Lake Co. #383.
 - c) Exhibits:
 - Petitioner Exhibit 1: Introductory letter
 - Petitioner Exhibit 2: Synopsis of purportedly comparable properties and 4 pages of pictures of the subject properties
 - Petitioner Exhibit 3: Additional purportedly comparable properties
 - Petitioner Exhibit 4: Information concerning the 1999 sale of a purportedly comparable property
 - Petitioner Exhibit 5: Amendment to listing contract showing price reduction
 - Petitioner Exhibit 6: Notices of Final Assessment for 5 lots

 - Board Exhibit A: Form 139 L
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Sign in Sheet
 - d) These Findings and Conclusions.

Analysis

- 15. The most applicable laws are:
 - a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

- b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
 - c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
16. The Petitioner provided sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) The Respondent recommended making adjustments to the assessments after reviewing the Petitioners’ testimony and evidence.
 - b) The Petitioners agreed with the recommendations made by the Respondent.
 - c) The recommended and agreed upon adjustments to be made are:
 - 1) Applying an influence factor of negative 70% for Lots 91, 92, 93, and 94.
 - 2) Applying an influence factor of negative 90% for Lot 95.
 - 3) Changing the condition of the garage located on Lot 92 to “very poor.”

Conclusion

17. Based on the recommendation and agreement of the Parties, the Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.